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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID B. KINDER, AMANDA C. MALLARE,
and SCOTT P. CASEY

Appeal 2008-3135
Application 09/515,272
Technology Center 2600

Decided: December 23, 2008

Before ROBERT E. NAPPI, JOHN A. JEFFERY, and KARL D. EASTHOM, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the final rejection of claims 1-3 and 5-21.

We affirm.

INVENTION

The invention is directed towards a method of transmitting video content with a viewer incentive image that is displayed over time. Claim 1 is representative of the invention and reproduced below:

1. A method comprising:

transmitting video content;

transmitting partial, incomplete portions of a complete viewer incentive image over time in association with said content, such that the portions of said image accumulate depending on viewing time to form said complete image; and

enabling said partial incomplete portions to be displayed and viewed without displaying the complete incentive image, the extent of said incomplete image that is displayed in the form of said portions being dependent on the time spent viewing video content.

REFERENCES

Dedrick	US 5,604,542	Feb. 18, 1997
Candelore	US 6,057,872	May 2, 2000 (filed Jul. 9, 1997)
Robertson	US 6,486,895 B1	Nov. 26, 2002 (filed Sep. 8, 1995)
Bauminger	US 6,681,393 B1	Jan. 20, 2004 (filed Jun. 3, 1998)

PNG (Portable Network Graphics) Specification, Version 1.0, (Oct. 1, 1996) ("PNG").

REJECTIONS AT ISSUE

Claims 1-3, 9, 12-15, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dedrick in view of PNG. The Examiner's rejection is on pages 3-7 of the Answer.

Claims 5 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dedrick in view of PNG and Bauminger. The Examiner's rejection is on pages 7 and 8 of the Answer.

Claims 6, 10, 11, 17, 18, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dedrick in view of PNG and Candelore. The Examiner's rejection is on pages 8-10 of the Answer.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dedrick in view of PNG, Candelore and Robertson. The Examiner's rejection is on pages 10 and 11 of the Answer.

Throughout the Opinion, we make references to the Brief (received Nov. 20, 2006), the Answer (mailed Dec. 4, 2007), and the Reply Brief (received Jan. 24, 2008) for the respective details thereof.

ISSUE

Rejection under 35 U.S.C. § 103(a) over Dedrick in view of PNG.

Appellants argue on pages 10 and 11 of the Brief that the Examiner's rejection of claims 1-3, 9, 12-15, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Dedrick in view of the PNG Specification is in error. Appellants argue that the references do not teach the ability to display a partial, incomplete image as it is received over time. Brief 10. Appellants also argue that the references do not teach progressively displaying portions of one image based on time spent viewing something else. Brief 11. Additionally, Appellants argue that a reference which teaches increasing the rapidity of overall image display, necessarily teaches away from the claimed invention. Brief 11. Finally, Appellants argue that neither reference nor their combination (or any motivation asserted to date) gives any reason why one would display first the earned portion of less than all of the images. Brief 11.

Thus, with respect to claims 1-3, 9, 12-15, and 19-20, Appellants' contentions present us with the issue of whether the Examiner erred in finding that the combination of Dedrick and PNG teach displaying portions of an image based on viewing video content as claimed.

FINDINGS OF FACT

1. Dedrick teaches transmitting a video signal and an advertisement, in the form of an image, to an end user. Dedrick, col. 2, ll. 14-15; Fig. 1.

2. The electronic advertisement is packetized and converted into a serial data stream before it is inserted into the vertical blanking interval of the video signal. Dedrick, col. 2, ll. 30-43; Fig. 2.
3. An encoder 14 provides the video signal and the electronic advertisement to a transmitter 80 which transmits the information to a receiver. Dedrick, col. 3, ll. 17-19; Fig. 1.
4. The receiver provides the transmitted information to a decoder 84 that unpacketizes the transmitted information and provides the information to a server 86. Dedrick, col. 3, ll. 25-30; Fig. 1.
5. A skilled artisan knows that the number of packets received through a vertical blanking interval of a video signal is related to the amount of time the video signal is received and displayed.
6. When the end user utilizes a computer with video capability, both the video and the advertisement may be displayed on a video monitor of the computer. Dedrick, col. 3, ll. 34-37.
7. PNG teaches a progressive display wherein a suitably prepared image file can be displayed as it is received over a communications link, yielding a low-resolution image very quickly followed by gradual improvement of detail. PNG: 1, Introduction.
8. A skilled artisan knows that a low-resolution image version of a high resolution image is an incomplete copy of the high resolution image.
9. Images are interlaced to allow the images to "fade in" when they are being displayed on-the-fly in order to give a user a meaningful display much more rapidly. PNG: 2.6, Interlaced data order.

PRINCIPLES OF LAW

Office personnel must rely on Appellants' disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). "[I]nterpreting what is *meant* by a word *in* a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" *In re Cruciferous Sprout Litigation,* 301 F.3d 1343, 1348, (emphasis in original) (citing *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989)).

On the issue of obviousness, the Supreme Court has stated that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007).

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. . . . [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 1740. "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent's claims." *Id.* at 1742.

ANALYSIS

Rejection under 35 U.S.C. § 103(a) over Dedrick in view of PNG.

Initially, we note that Appellants' arguments are directed to all of the claims rejected under 35 U.S.C. § 103(a) as a group. Thus in accordance with 37 C.F.R. § 41.37 (c)(1)(vii), claims 1-3, 9, 12-15, 19, and 20 are grouped together and we select claim 1 as representative of the group.

Appellants' arguments have not persuaded us that the Examiner erred in finding that the combination of Dedrick with PNG teaches displaying a partial, incomplete image as it is received over time. Appellants interpret this portion of the claim to mean that portions of the image are displayed after they are earned through viewing the video content. Brief 10. The Examiner has found that earning by viewing is not a limitation in the claim and that the claim simply requires that portions be displayed dependent upon the time spent viewing video content. Answer 11. We concur with the Examiner's claim interpretation. Claim 1 recites "the extent of said incomplete image that is displayed in the form of said portions being dependent on the time spent viewing video content." Claim 1 makes no mention of "earning" portions of the image as argued by Appellants. While Appellants' Specification may include such a disclosure, we decline to import such a limitation into the claim. Rather, we construe claim 1 as reciting that the display of portions of the image is dependent upon time that the video image is viewed.

Dedrick teaches transmitting a video signal that has an advertisement to an end user imbedded in the vertical blanking interval of the video signal. Facts 1 and 2. The advertisement is in the form of an image that has been packetized (i.e. broken up in to data packets) and is transmitted serially in

the vertical blanking interval. Fact 2. Thus, as the advertisement in Dedrick is packetized, each portion received is an incomplete portion of the advertisement. Further, as the packets are in the vertical blanking interval, which is a part of every video frame, they are received over time. As the video frames are received and displayed, the number of packets received is related to the amount of time the video signal is received and displayed. Fact 5.

PNG teaches a progressive display, wherein an image file is displayed as it is received over a communications link, yielding a low-resolution image (a partial image) very quickly followed by gradual improvement (more portions of the image) of detail until the full resolution image is displayed. Facts 7 and 8. PNG teaches that the purpose of such a system is that it allows the image to be viewed more quickly. Fact 9.

We consider combining PNG's display technique of the quick display of a partial image, low resolution image, followed by iteratively improving the resolution of the image, with Dedrick's teaching of transmitting data to a user to nothing more than using known methods for their known purpose.

In combining the teachings of the references one skilled in the art would recognize that to achieved the iterative improvement of the image, the low resolution image (incomplete or partial image) would be transmitted in the earlier packets, and that the improvements would be transmitted in subsequent packets. Thus, we find that the references collectively teach that the partial image (low resolution image) is displayed and, over time as more video frames are received and displayed, more packets of advertisement data in the vertical blanking interval are received. As a result, more portions of the image would therefore be displayed, thus improving the resolution of the

advertisement. Accordingly, Appellants' arguments have not persuaded us of error in the Examiner's rejection as we find that Dedrick teaches sending an incentive with a video signal and PNG teaches displaying incomplete portions based on viewing time of the video signal.

Appellants additionally argue that the references do not teach progressively displaying portions of one image based on time spent viewing something else. Brief 11. Appellants argue this is so because neither Dedrick nor PNG describe a system in which the advertisement is displayed as received at the same time as the video image. Reply Br. 1. We disagree. Dedrick teaches that the electronic advertisement is packetized and converted into a serial data stream before it is inserted into the vertical blanking interval of the video signal. Fact 2. After the encoder transmits the information, the information is decoded and unpacketized and sent to a server where a computer with video capability may display both the video and the advertisement on a video monitor of the computer. Facts 3, 4, and 6. We find, therefore, that Dedrick does teach that the video signal and the electronic advertisement are displayed concurrently and Appellants' arguments have not persuaded us of error in the Examiner's rejection.

Appellants' argument, on page 11 of the Brief and page 2 of the Reply Brief, that Dedrick teaches away from the claimed invention because Dedrick teaches increasing the rapidity of overall image display, is not persuasive. PNG teaches that the overall image display is a low-resolution image that can "fade in" to give a user a more meaningful display more rapidly. Facts 7 and 9. As discussed above we find that the combination of the references teach that the display includes more of the image (higher resolution) over time. We find that this meets the claimed limitation.

Appellants assert that the intent of the claim is to delay the image's overall presentation. Brief 11. However, these arguments are not commensurate with the scope of the claim as claim 1 does not recite a delay in the overall image display. As such, Appellants' arguments have not persuaded us of error in the Examiner's rejection.

Appellants' assertion, on page 11 of the Brief, that neither reference nor their combination gives any reason why one would display first the earned portion of less than all of the image, is not relevant. The claim language only requires that an image is displayed dependent upon the time spent viewing video content. As discussed above, this claim limitation has been met. Therefore, Appellants' assertion has not persuaded us of error in the Examiner's rejection.

For the above reasons, we sustain the Examiner's rejection of claims 1-3, 9, 12-15, and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over Dedrick in view of PNG.

Appellants have not presented arguments directed to the rejection of claims 5 through 8, 10, 11, 16 through 18, and 21. Appellants do, however, state on page 5 of the Brief that "claims 1-3, 9, 12-15, and 19-20 are the subject of this appeal." While such a statement might indicate that Appellants intended to withdraw claims 5 through 8, 10, 11, 16 through 18, and 21 from appeal (*see Ex Parte Ghuman,* 88 USPQ 1478 (BPAI May 1, 2008) (precedential), *available at* http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf), we decline to so treat the claims since Appellants expressly stated in the Notice of Appeal dated Feb 13. 2006, that they are appealing the rejection of claims 1-3, and 5-21. Therefore, the rejection of claims 5 through 8, 10, 11, 16

through 18, and 21 is before us. As Appellants have not presented arguments directed to the rejections of these claims, we sustain the Examiner's rejections of these claims *pro forma*. *See* MPEP § 1205.02 ("If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.").

SUMMARY

In summary, we sustain the Examiner's rejections of claims 1-3 and 5 through 21 under 35 U.S.C. § 103(a). The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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